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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re YANMARRIE C., a Person Coming Under
the Juvenile Court Law.

CONTRA COSTA COUNTY, EMPLOYMENT
& HUMAN SERVICES DEPARTMENT,
CHILDREN & FAMILY SERVICES,

Plaintiff and Respondent,

v.

HELEN G.,

Defendant and Appellant.

A106971, A107176

(Contra Costa County
Super. Ct. No. J95-00036)

The mother of a minor child appeals from orders summarily denying two petitions for modification of prior orders issued by the juvenile court. (Welf. & Inst. Code, § 388.)¹

We affirm.

BACKGROUND

We last saw this case in December 2003, when we filed an opinion affirming an order denying the mother's petition to modify a prior order. (*In re Yanmarrie C.*, (Dec. 30, 2003, A102849) [nonpub. opn.].) As we explained there, the child came to the attention of the Children & Family Services Department (Department) in January 1995,

¹ Except as indicated, all statutory references are to the Welfare and Institutions Code.

when she was approximately three months old and appeared to have suffered nonaccidental injuries to her face and chest, most likely inflicted by the mother's boyfriend. The mother had problems and issues that were not quickly resolved, and although the child lived with the mother from time to time for the first two years of her life, by January 28, 1997, she was in a foster home—where she has remained ever since. The foster mother has been appointed to be the child's legal guardian. (*In re Yanmarrie C.*, *supra*, A102849, pp. 1-2.)

In April 2003, the mother petitioned for a modification of the order adopting guardianship as the permanent plan. She alleged that she had successfully reunited with another of her children, no longer had any contact with her boyfriend, had completed all the elements of her original reunification plan and had maintained a strong relationship with the child. The juvenile court denied the petition, and we affirmed, finding that the mother's progress, although commendable, was not the kind of change in circumstances justifying a change in the child's placement. We pointed out that by that stage of the proceedings, a parent can obtain a change in custody only by showing that the change would be in the child's best interest. When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role, giving rise to a presumption that continued foster care is in the child's best interest. (See *In re Angel B.* (2002) 97 Cal.App.4th 454, 464.) We concluded:

“Even assuming that the mother's reunification with the child's half-sibling constituted ‘changed circumstances,’ neither that fact nor any of the others asserted by the mother supported her claim that a change in placement would be in the child's best interest. There was no suggestion that the foster mother's care had become anything other than exemplary or that the child no longer was benefiting from that care. There was no suggestion that the child had developed a closer relationship with the mother than she had enjoyed at the time reunification services were terminated and the permanent plan adopted. There was no evidence that the child had in any way bonded with her half-brother—who had become a member of the mother's household only after the child had been removed from her custody. In short, the mother failed to rebut the presumption—

supported by the record—that removing the child from the stable and loving home of the foster mother would be in her best interest.” (*In re Yanmarrie C.*, *supra*, A102849, p. 4.)

In the meantime, in December 2003, the child—then nine years old—filed her own petition for modification, requesting adoption by the foster mother. In January 2004, the Department reported that the foster mother had been referred for a home study, but the supervisor of the relevant unit asserted that there could be no home study because the foster mother’s license to act as a foster parent had been revoked in 1999. In March 2004, the Department revised its report to explain that the loss of the license did not disqualify the foster mother from the home study process. The Department reported, further, that the home was appropriate and nurturing for the child, and there were no indications of physical or emotional abuse there. The child wished to remain in her foster mother’s care. The Department recommended that the child’s petition be granted and that proceedings be instituted toward allowing the foster mother to adopt the child.

Before ruling on the child’s petition, the court ordered the Department to provide documents pertaining to the decision to revoke the foster mother’s license. These documents were forwarded to the court on February 26, 2004, and were made court exhibits for purposes of the hearing on the child’s petition. They disclosed that in early 1999, a social worker working with two other children discovered problems in the foster mother’s home. Four children had been cleared to live with the foster mother, including the child at issue here and an adoptive child. There is no report that either the child at issue here, or the adoptive child, suffered from any health issues, but the other two children may have been suffering from malnutrition. The foster mother apparently disciplined the children by striking them on the hands with a shoe, spanking their bare bottoms and possibly hitting one child at least once with a spatula. The foster mother left the children—plus several other children—in the care of her two adult sons, who occupied the bedrooms, with the result that the children may have been living out of boxes or Tupperware containers and sleeping on cots in the living room. The two malnourished children already had been removed. The social worker removed the child, but she was returned the following day. The foster mother did not contest the social

worker's report, or the allegations based on that report, and her license was revoked on September 1, 1999.

Other evidence, established in connection with earlier proceedings, supported a conclusion that notwithstanding the circumstances leading to the revocation of her license, the foster mother had maintained a safe, secure and supportive environment for the child, that the child was doing well with the foster mother and that the child did indeed wish to be adopted by her.

On March 16, 2004, after a hearing, the court granted the child's petition to modify. The mother filed a section 388 petition to modify on May 13, 2004, and another section 388 petition on June 23, 2004. The court summarily denied each petition. The mother appeals from the orders denying each petition, but is pursuing only the second appeal, conceding that her petition of May 13, was not supported by sufficient evidence.

DISCUSSION

Section 388 allows a parent, such as the mother, to seek a modification or change of a previous order "upon grounds of change of circumstance or new evidence."

(Subd. (a).) The court is required to hold a hearing into the matter if it appears that the best interests of the child may be promoted by the proposed change of order. (Subd. (c).) A petition that fails to state a change of circumstance or new evidence that might require a change of order or a termination of jurisdiction may be denied ex parte. (Cal. Rules of Court, rule 1432(b); *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1450.)

The mother contends that the court acted improperly in summarily denying her petition, claiming that she showed both new evidence and a change in circumstance. The "new evidence" was the evidence relating to the 1999 termination of the foster mother's license. The court, however, had considered the same evidence in connection with the child's section 388 petition, and in granting the petition, determined that, notwithstanding the evidence, the child's best interest was to be adopted by the foster mother. The court had no obligation to provide the mother with a hearing so that it could examine the same evidence a second time. The mother also claimed that changed circumstances existed in that she had continued to make progress as a parent and was capable of parenting the

child. As we pointed out in December 2003, however, the fact that the natural parent has become capable of caring for the child does not rebut the presumption that the child's best interest is to remain in the existing placement.

In conclusion, the mother did not make the showing required by section 388 and California Rules of Court, rule 1432, to establish a right to a hearing on her petition. The court did not err in summarily denying the mother's petition.

The orders denying the mother's petitions are affirmed.

STEIN, J.

We concur:

MARCHIANO, P.J.

SWAGER, J.